



THE ATTORNEY GENERAL OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN, TEXAS

May 19, 1947

Honorable Hall Logan, Chairman
State Board of Control
Austin, Texas

Opinion No. V-206

Re: Use of Special Cen-
tennial Fund for
purchase of French
Embassy.

Dear Mr. Logan:

In accordance with the request made by the Board of Control for re-examination of Treasury Account No. 23, "Special Centennial Fund", appropriated by House Bill 728, Chapter 286, Acts of 49th Legislature, for the purchase of the French Embassy in Austin, Texas, and in view of the recent report of the State Auditor that the fund constitutes State money, we report as follows:

Without an audit or complete study of such fund, and upon assumption that the fund was comprised wholly of Federal appropriations left over from the Texas Centennial, this Department held in former Opinions, Nos. O-6522, O-6780 and V-27, that the money could not be used in accordance with House Bill 728, 49th Legislature, for the purchase of the French Embassy and grounds without the approval of Congress.

Upon suggestions from the Offices of the State Comptroller and State Treasurer that the remaining money in the Special Centennial Fund actually represented amounts spent from State Centennial Funds which could and should have been spent from Federal funds, and that as a matter of bookkeeping, the Federal funds had not been transferred nor applied to the excess spent out of State funds, this Office asked Hon. C. H. Cavness, State Auditor, to examine the account. By letter dated April 16, 1947, Mr. Cavness stated:

"After reviewing the information submitted, it is my opinion this balance can

be considered State funds subject to disposition by the Legislature.

"The balance in the fund is a residue of funds received from the Federal government, from private donors and from reallocation made by the Centennial Control Commission out of funds granted for specific and special projects within the Centennial program.

"The commingling of these funds and the fact that the Federal Centennial Commission long ago made its final report and returned to the United States Treasury their unallocated balance precludes, I believe, any other claim to the present funds other than the claim of the State of Texas."

In view of this report, the fact situation is entirely different from the statement or assumption of facts on which previous opinions of this Office were based. In accordance with such findings by the State Auditor, we now hold that the fund was subject to appropriation for the purposes set out in House Bill 728 of the 49th Legislature, which provides in part as follows:

"There is hereby appropriated all moneys now in the Texas Centennial Commission funds if and when available, to apply on the purchase of the French Embassy building and all properties therein. . ."

(Section 2 contains a description of the property to be purchased under said Bill.)

"Said building is hereby set aside for the uses and purposes of the Daughters of the Republic of Texas, and the said Daughters of the Republic of Texas be and the same are hereby authorized to take full charge of said building and use of the same as they may see proper. The property of the said French Embassy shall be the property of the State, and the

title of said property shall remain in the custody of the Board of Control."

Accordingly, it is our opinion that the Board of Control may contract for the purchase of the property, and when there is tendered to the Board a good and sufficient deed conveying fee simple title to the State of Texas, you are authorized to accept the same for the State. Thereupon, you will be authorized to request that the Comptroller issue a warrant for the payment out of the Treasury to the owners of said property, of the balance of said fund, provided, of course, that the actual purchase price of said property is at least equal to that balance. The Comptroller will be authorized to issue, and the Treasurer will be authorized to pay such warrant. We call your attention to the fact that House Bill 728 became effective on May 31, 1945. Your contract for purchase should be completed on or before May 31, 1947, before the appropriation expires.

SUMMARY

Since the State Auditor has found Treasury Account No. 23, "Special Centennial Fund", to be State funds (a fact situation which was not known when former Opinions, Nos. O-6522, O-6780 and V-27 were written), the balance therein may be used by the Board of Control in accordance with House Bill 728, 49th Legislature, for the purchase of the French Embassy.

Very truly yours

Price Daniel

Price Daniel
Attorney General

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